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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 25, and 52

[FAC 2005-54; FAR Case 2010-012; Item IV; Docket 2010-0102, Sequence 1]

RIN 9000-AL71

Federal Acquisition Regulation; Certification Requirement and Procurement Prohibition Relating to Iran Sanctions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 102 requires certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996 (the Iran Sanctions Act). Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of section 106 in FAR Case 2010-018,

Representation Regarding Export of Sensitive Technology to Iran.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219-0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-54, FAR Case 2010-012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 75 FR 60254 on September 29, 2010, to implement section 102 and to partially implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. FAR Case 2010-018, Representation Regarding Export of Sensitive Technology to Iran, will provide further implementation of section 106 by adding a representation regarding export of sensitive technology to Iran and a waiver provision.

Two respondents submitted comments on the interim rule.

II. Discussion and Analysis of the Public Comments

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A

discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Applicability to construction

Comment: One respondent was concerned that the prescription at FAR 25.1103, which requires use of the FAR provision at 52.225-25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification, in “each solicitation for the acquisition of products or services” could be interpreted to exclude construction. The respondent suggested changing the prescription to require use in “all solicitations.”

Response: The phrase “products or services” was intended to include construction, as indicated in the FAR clause matrix. DoD, GSA, and NASA have agreed to change the final rule to require use of the provision in “all solicitations.”

B. Commercial database of persons doing business with Iran

Comment: One respondent provided information about the commercial Iran Economic Interest database of persons doing business with Iran, provided by World-Check, a provider of data services to organizations, including Government contractors. This respondent believed that this data set provided by his company is the only standard that would allow Government contractors the ability to comply with the

provisions of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. He suggested that the Government should require or recommend that contractors should have this data available before they "self-certify."

Response: The Government does not generally promote the use of particular commercial services. DoD, GSA, and NASA have not changed the final rule in response to this comment.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because this rule will only have impact on an offeror that is engaging in an activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act or that is exporting sensitive technology to Iran. This rule will have little effect on domestic small business concerns, because such dealings with Iran are already generally prohibited under U.S. law. Due to current restrictions on trade with Iran, domestic entities are generally prohibited from engaging in activity that would cause them to be subject to the procurement bans described in this rule (see e.g., Department of the Treasury Office of Foreign Assets Control regulations at 31 CFR part 560). Accordingly, it is expected that the number of domestic entities, both large and small, significantly impacted by this rule will be minimal, if any.

Although this rule mainly affects foreign entities, the Regulatory Flexibility Act is for the protection of domestic small entities, not foreign entities. For the definition of "small business", the Regulatory Flexibility Act refers to

the Small Business Act, which in turn allows the Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: "(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor." Therefore, the impact assessment does not include the impact on foreign entities.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 25, and 52

Government procurement.

Dated: October 21, 2011.

/s/

Laura Auletta,
Acting Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Interim Rule Adopted as Final with Change

Accordingly, the interim rule amending 48 CFR parts 4, 25, and 52 which was published in the Federal Register at 75 FR 60254 on September 29, 2010, is adopted as final with the following change:

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Amend section 25.1103 by revising paragraph (e) to read as follows:

25.1103 Other provisions and clauses.

* * * * *

(e) The contracting officer shall include in all solicitations the provision at 52.225-25, Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran-Representation and Certification.

[BILLING CODE 6820-EP]

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